Supreme Court, U. S.
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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 75-1227

PAUL GOODSELL SULLINS,

Petitioner,

vs.

THE STATE BAR OF CALIFORNIA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

PAUL GOODSELL SULLINS
1545 East Brae Burn Road
Altadena, California 91001
(213) 794-6270

In Propria Persona

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THE SUPREME COURT OF THE STATE OF CALIFORNIA,

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PETITION FOR A WRIT OF CERTIORARI

TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

PAUL GOODSELL SULLINS, the petitioner herein, appearing In Propria Persona, prays that a writ of certiorari issue to review the judgment of the Supreme Court of California entered on December 1, 1975, wherein it was

ordered that the petitioner be publicly reproved by publication of the court's opinion.

OPINION BELOW

Respondent's opinion has been printed in the advance sheets of 15 Cal. 3d 609, 125 Cal. Rptr. 471, 542 P. 2d 631 but has not been published in a bound volume of the Official Reports of the opinions of Respondent. Said opinion is printed in Appendix A hereto, upon pages 1-24. The judgment of the Supreme Court of California is printed in Appendix A hereto, upon page 24.

JURISDICTION

The judgment of the Supreme Court of California (Appendix A, infra, page 24) was entered on December 1, 1975. A timely petition for rehearing was denied on December 30, 1975 (Appendix A, infra, page 25). The jurisdiction of the Court is invoked under Rule 19 1(a) of the Rules of the Supreme Court of the United States, and the due process clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States. Rule 19 1(a) provides that writ of certorari will be granted "where a state

court has decided a federal question of substance * * "in a way probably not in accord with applicable decisions of this court." Said due process clause provides: "No State shall * * deprive any person of life, liberty, or property, without due process of law * * ." Respondent's decision holding that I, petitioner herein, was accorded due process, is in direct conflict with Morgan v. United States of America, 304 U.S. 1, and Re Ruffalo, 390 U.S. 544.

Rule 976(a) of the California Rules of Court provides: "All opinions of the Supreme Court shall be published in the Official Reports." Although said opinion filed on December 1, 1975 herein has been printed in newspapers and advance sheets, it has not appeared in a bound, official volume containing the Official Reports, and has therefore not yet been "published" by a "publication of this opinion" as ordered by the court in its said order of December 1, 1975.

QUESTIONS PRESENTED

1. Whether or not an attorney was denied due process of law in a disciplinary proceeding against him, in violation of the guaranty granted to him in the 14th Amendment to the Constitution of the United States of America, in that, although the Local Administrative Committee at the outset of the proceedings, ordered

the State Bar to set forth, in a further amendment to its notice to show cause, and in a response to a motion to dismiss the proceedings to be filed by the attorney, a specific statement of all factual and legal issues on which the State Bar relied, said statement to be like a post-trial brief after the trial had been completed and all the evidence was in, and when the State Bar subsequently found the attorney guilty of misconduct based upon purported facts and offenses not stated either in its said amendment to its notice to show cause or in its statement of all factual and legal issues on which it relied.

2. Whether or not an attorney was denied due process of law in a disciplinary proceeding, in violation of the guaranty granted to him in the 14th Amendment to the Constitution of the United States, when the State Supreme Court finds the attorney guilty of misconduct, basing its decision not only upon the facts and charges upon which the State Bar based its decision, but also upon a large number of purported additional facts and additional purported offenses not charged by the State Bar in its said amended notice to show cause nor set forth in its statement as factual and legal issues on which it relied, and as to which no notice was given to the attorney, prior to the commencement of the proceedings, that said purported additional facts and purported additional offenses would be relied upon.

CONSTITUTIONAL PROVISION INVOLVED

The constitutional provision involved is the due process clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States: "* * No State shall * * deprive any person of life, liberty, or property, without due process of law; * *."

CONCISE STATEMENT OF CASE

The facts material to the consideration of the case are as follows:

In a disciplinary proceeding commenced against me on July 16, 1971, the State Bar of California (hereafter called "State Bar") claims that I misled the probate court on September 18, 1967 when I presented to it a petition for approval of a contingent fee agreement with the administrator for prosecution of an action by the estate against a daughter of the decedent. I had originally filed the action on November 5, 1963, prior to the decedent's death on January 8, 1964. In its notice to show cause the State Bar alleged that I wilfully failed to disclose to the court the existence or contents of a letter sent to me, as attorney for the executor, on June 9, 1964, by

the sole beneficiary under the will whereby he assigned, or purported to assign, all of his interest in the estate to the said daughter of the decedent.

Throughout this proceeding, from its inception, I contended that the notice to show cause failed to state any facts constituting grounds for discipline against me. I so contended in Point I of my Answer filed May 1, 1972. I so contended also on August 16, 1972 in my Answer To First Amendment To Notice To Show Cause -- Notice of Motion To Dismiss Proceeding, and the first hearing was devoted to argument and discussion thereon. The second hearing, held on September 6, 1972, was devoted to argument on my motion to dismiss the proceeding.

Crucial Order.

Because Respondent's opinion very meticulously avoids even mentioning what I consider to be the crucial, controlling factor in this case, which was an order made by the Local Administrative Committee (hereafter called "Committee") at the conclusion of the second hearing on September 6, 1972, I here set forth a direct quote of that order from the transcript:

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"CHAIRMAN HANSON: Let the record show that Mr. Miller and I have met briefly and discussed the procedural aspects of this and where we are going to go from here, and here's what we would propose as the steps to be taken in the future, to be taken today. First, that another Amended Notice be filed in writing by Mr. Dalton [Examiner], and we will set a time on that a little bit later, and let me state, Mr. Dalton, that in view of the nature of this case and the history of it, particulary with respect to the pleadings, we are going to hold you to your Amended Notice, and we will not permit you to read into any allegations in Paragraph VI, for example, any facts or other words that you say are apparent when you look at the whole document as a whole. We expect you when you file your Notice, your Amended Notice, that you set forth whatever facts you expect to prove and set them forth sufficiently clearly and concisely that the Committee knows exactly what you intend to prove. So you're not bound to file an amendment which is in the exact words that you have proposed today, but whatever you do it's the Committee's intention to hold you to that as to what facts you're going to be permitted to prove. I say this because in this

particular case I think Mr. Sullins is entitled to know with a fair amount of specificity what the charges are." [2 T. 116/25-117/19].

"MR. DALTON: Just one point of clarification, you had indicated that in the State Bar's preparation of a memorandum and response to any motion that Mr. Sullins may make that the Committee desired reference to Code sections and case authority supporting the State Bar's point of view that the facts alleged in the Notice to Show Cause do constitute misconduct. Now, is it the Committee's desire that that memorandum be submitted separate and apart from any response to the motion, that is my motion, that Mr. Sullins may make, and even should he make no motion whatsoever, or do you feel that is only a matter of response?

"CHAIRMAN HANSON: First of all I think that is a hypothetical question. I think it's not a question as to whether Mr. Sullins is going to make a motion, because I think he has made it perfectly clear that he does intend to file such a motion. I don't think the Committee cares whether you put that in a separate document or whether you include it

in your response. I will let you choose that.

"MR. DALTON: I think my question is more directly that Mr. Sullins' motion may not be directed at that particular question, and I'm wondering whether this is a question raised by the Committee itself desiring an answer even prior to any motion that Mr. Sullins may make, or is it merely a matter of --

"CHAIRMAN HANSON: It can be made in the response, but we want it regardless, and let me state what the Committee has in mind here. This is the kind of case where before it's all over the Committee desires your assistance in anything you want to present to it in writing rather than doing it by oral argument at some point, so I would contemplate that this memorandum you file will be the kind of memorandum that you would file assuming we had substantially, assuming that it was like a post-trial brief after the trial had been completed and all the evidence is in and then the Committee were to call on you to prepare in writing a memorandum setting forth the factual and legal basis for your position, and I state this, I'm asking you to maybe jump the gun a little bit but it appears

to the Committee that there aren't that many factual disputes to the extent that there are factual disputes, and to the extent that they are important in resolving this we will resolve those disputes after we have heard evidence if we get to that, but this should be in the nature of a complete statement of the State Bar's position with respect to all the points that Mr. Sullins has raised. I think we should both recognize that prior to the next hearing the Committee will have reviewed all of the memoranda, we will have reviewed all of the exhibits that have been submitted, we will be familiar with all of the aspects of the case, and what we expect you to do is to call to the Committee's attention everything factually and legally that you want the Committee to consider in this matter. I'm asking you for a substantial undertaking, and in view of what we have asked is the time schedule satisfactory to you?

"MR. DALTON: Yes, it is." [2 T. 135/16-137/12].

On September 18, 1972, the State Bar filed a document labeled "SECOND AMENDMENT TO NOTICE TO SHOW CAUSE," in Par. VI of which it alleged:

"On or about September 18, 1967, you filed a petition with the

probate court to obtain approval of your contingent fee agreement to prosecute said lawsuit against Gladys Betty Heitz (NEC 2141) and notwithstanding Mr. Fick's stated intention to relinquish his total interest, as sole beneficiary, in said estate to said Gladys Betty Heitz, with a view to misleading the court, you wilfully failed to disclose to the probate court the existence and contents of said letter from Bradford Fick."

On November 17, 1972 the State Bar filed a document labeled "MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO DISMISS PROCEEDING" [hereafter called "Memorandum"]. The latter memorandum stated no facts, and stated no factual or legal issues other than what were stated in the State Bar's Second Amendment. On these pleadings we went to trial.

The record shows that at the hearings I repeatedly and at length objected to the Committee that I was not being accorded due process of law by its receiving evidence offered by the State Bar, or hearing arguments on factual and legal issues not specifically set forth in the State Bar's pleadings and memorandum. [3 T. 265/23-266/1; 5 T. 352/21-354/5; 5 T. 358/6-359/2; 5 T. 385/17-392/28; 6 T. 460/12-461/1; 6 T. 464/20-465/2]. At the hearing on February 7, 1973, in support of my contention that I was

not being accorded due process of law because the State Bar was attempting to introduce purported facts and purported offenses which were not set forth in its second amendment to its notice to show cause filed September 18, 1972, and in its memorandum filed November 17, 1972, of all factual and legal issues on which it relied, I cited and quoted from the case of Morgan v. United States of America, 304 U.S. 1, in which this Court held that the right to a hearing embraces not only the right to present evidence, but also a reasonable opportunity to know the the claims of the opposing party and to meet them [5 T. 385/17-392/28].

In total disregard of my said objections, and in total disregard of all of its own orders, the Committee nevertheless proceeded, on May 20, 1974, to make findings upon purported facts and offenses not charged in the State Bar's notice, as amended, and upon matters which were not specifically set forth by the State Bar in its memorandum as factual and legal issues for its position. This is concisely summarized in Point I of my Argument in my Petition For Writ of Review filed with the Respondent on February 6, 1975:

> "I WAS DENIED DUE PROCESS OF LAW, IN VIOLATION OF THE GUARANTY GRANTED TO ME IN THE 5TH AND 14TH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA

AND IN ARTICLE I, §13, CLAUSE 6 OF THE CONSTITUTION OF THE STATE OF CALIFORNIA, IN THAT, ALTHOUGH THE LOCAL ADMINISTRATIVE COMMITTEE ON SEPTEMBER 6, 1972, ORDERED THE STATE BAR TO SET FORTH, IN A FURTHER AMENDMENT TO ITS NOTICE TO SHOW CAUSE, AND IN A RESPONSE TO A MOTION TO DISMISS THE PROCEEDINGS TO BE FILED BY ME, A SPECIFIC STATEMENT OF ALL FACTUAL AND LEGAL ISSUES ON WHICH IT RELIED, SAID STATEMENT TO BE LIKE A POST-TRIAL BRIEF AFTER THE TRIAL HAD BEEN COMPLETED AND ALL THE EVIDENCE WAS IN, AND ALTHOUGH IN ITS SAID AMENDMENT FILED ON SEPTEMBER 18, 1972, AND IN ITS SAID STATEMENT FILED ON NOVEMBER 17, 1972, THE STATE BAR MADE NO MENTION WHATEVER OF (1) ANY 33 1/3% CONTINGENCY FEE IN ACTION NEC 2141, (2) ANY 50% CONTINGENCY FEE IN ACTION NEC 2141, (3) ANY PURPORTED ALLEGATIONS IN MY PETITION FILED IN THE SUPERIOR COURT ON SEPTEMBER 18, 1967, (4) ANY PURPORTED REMOVAL PROCEEDINGS AGAINST ME IN THE SUPERIOR COURT OR IN THE

COURT OF APPEAL, OR (5) ANY PURPORTED OFFENSE THAT I 'CONCEALED' SOMETHING FROM THE COURT, AND ALTHOUGH SAID MATTERS WERE OUT OF THE CASE AND WERE NOT LITIGATED IN THE HEARINGS, YET THE LOCAL ADMINISTRATIVE COMMITTEE PURPORTED TO MAKE FINDINGS ON ALL OF SAID MATTERS, AND ITS FINDINGS, ADOPTED BY THE DISCIPLINARY BOARD, AND THE DECISION OF THE DISCIPLINARY BOARD, BASED THEREON, ARE NULL AND VOID."

REASONS FOR GRANTING THIS WRIT

Respondent here passed upon a federal question: Whether or not I was given fair notice, prior to the beginning of the hearings, of the reach of the grievance procedure and the precise nature of the facts and charges, in compliance with the procedural due process guaranteed to me by the Fourteenth Amendment to the Constitution of the United States. Respondent sought, however, to conceal that it was passing upon a federal question by misstating my contention. It said: "We conclude there is no merit to petitioner's first contention that he was denied

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due process by variances between the notice to show cause and the board's findings." [Op. p. 14]. That was not my contention at all. I nowhere say anything about variances.

Respondent's Opinion Is In Itself
A Violation of the 14th Amendment.

Respondent based its decision here not only upon findings of the Committee and the Board of facts and charges of offenses not set forth in the notice to show cause and accompanying memorandum, but even upon a number of additional facts and offenses as to which I was never given notice. This is brought out in my timely petition for a rehearing filed on December 15, 1975, which the Respondent considered and denied on December 30, 1975:

> "THE COURT FAILS TO MENTION, CONSIDER, OR RULE UPON THE EFFECT OF THE ORDER OF THE LOCAL ADMINISTRATIVE COMMITTEE OF SEPTEMBER 6, 1972, WHICH VERY DRASTICALLY REQUIRED THE STATE BAR TO SET FORTH IN ITS AMENDED NOTICE TO SHOW CAUSE WHATEVER FACTS IT EXPECTED TO PROVE AND TO SET THEM FORTH SUFFICIENTLY CLEARLY AND CONCISELY THAT THE COMMITTEE

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WOULD KNOW EXACTLY WHAT THE STATE BAR INTENDED TO PROVE, AND WHICH SAID ORDER OF SEPTEMBER 6, 1972, FURTHER ORDERED THE STATE BAR TO SET FORTH, IN A RESPONSE TO A MOTION TO DISMISS THE PROCEEDINGS TO BE FILED BY ME, A STATEMENT OF ALL FACTUAL AND LEGAL ISSUES ON WHICH THE STATE BAR RELIED, SAID STATEMENT TO BE LIKE A POST-TRIAL BRIEF AFTER THE TRIAL HAD BEEN COMPLETED AND ALL THE EVIDENCE WAS IN.

"As I point out in detail in my POINT I of my Argument in my PETITION FOR WRIT OF REVIEW, the wholesale violations of said order of September 6, 1972, by both the Local Administrative Committee and by the Disciplinary Board denied me due process of law, in violation of the guaranty granted to me in the 5th and 14th Amendments to the Constitution of the United States of America and in Article I, §13, Clause 6 of the Constitution of the State of California.

"Not only does this Court ignore all of my said argument, but

it proceeds to base its decision not only upon all of the facts and charges not set forth in the State Bar's Amended Notice to Show Cause filed on September 18, 1972, and Statement filed on November 17, 1972, but upon even additional facts and charges which are not clearly and concisely set forth in said Amended Notice To Show Cause and Statement, and as to which I was never given any notice that they would be relied upon. Some of the said additional facts and charges are [continuing the numbering of extraneous facts and charges enumerated in POINT I of my Argument in my PETITION FOR WRIT OF REVIEW:

"(6) My letter to Fick (Op. fn. 7, p. 6);

"(7) Summary judgment on September 14, 1970 in the civil action (Op. fn. 12, p. 10);

"(8) My certificate of service of Notice of Hearing in May 1967 when appointment of Hubbell as administrator with the will annexed was first requested (Op. fn. 14, p. 16);

"(9) Daar's trial brief in the removal action (Op. fn. 15, p. 20; fn. 16, p. 21);

"(10) Charge that I misled the Court for my own gain (Op. pp. 19-20; fn. 15, p. 20; fn. 17, pp. 21-22);

"(11) Charge that I was guilty of mismanagement of the estate (Op. fn. 15, p. 20);

"(12) Charge that I was guilty of constructive fraud (Op. fn. 15, p. 20);

"(13) Charge that I was guilty of waste of property of the estate in maintaining the civil action (Op. fn. 15, p. 20);

"(14) Charge that the civil action was wholly inequitable (Op. fn. 15, p. 20).

"None of the foregoing further enumerated facts and charges have been clearly and concisely set forth in the State Bar's Amended Notice To Show Cause filed on September 18, 1972 and Statement filed on November 17, 1972. It necessarily follows that none is now available to this Court in arriving at its decision.

"* * *

"I submit that the Court is in error when it says that I was not prejudiced by the failure to give me notice of this great volume of facts and charges not clearly and concisely set forth in the State Bar's Amended Notice To Show Cause and Statement in accordance with the order's very stringent delimitation of the factual and legal issues to be tried. The violations of that order are wholesale. As I said in my said POINT I of my Argument in my PETITION FOR WRIT OF REVIEW:

> "'By giving me notice that none of said matters and charges were at issue I was seriously prejudiced in my defense. Given notice thereof, I could have examined into the facts and researched the applicable law very exhaustively prior to the hearing, could have procured testimony and evidence, both oral and documentary, and adduced the same at the hearing to meet said matters and charges, and could have argued intelligently and pointedly upon said matters

and issues. But here I was deprived of all of that. I respectfully submit that such deprivation was a clear denial of due process of law.' (p. 12, lines 18-27).

"I submit that the facts in Linnick v. State Bar, 62 Cal. 2d 17 (1964) upon which the Court relies, bear no resemblance to those here. In that case there was no order strictly delimiting the scope of the facts and issues on which the case would be tried, such as we have here.

"I respectfully point out that the Court incorrectly states the thrust of my said POINT I. That point is not that there is a variance between the Board's findings and the Notice to Show Cause. It is rather that I was not given fair notice of the facts and charges which the State Bar intended to rely upon at the hearing. As Chief Justice Hughes said, in Morgan v. United States of America, 304 U.S. 1, 82 L.Ed. 1129, 1132:

"'The right to a hearing embraces not only the right to present evidence but also a reasonable

> opportunity to know the claims of the opposing party and to meet them. The right to submit argument implies that opportunity; otherwise the right may be but a barren one.'

"In Re Ruffalo, 390 U.S. 544, 20 L.Ed. 2d 117 (1968), the Ohio Supreme Court disbarred an attorney based upon two charges, one of which was not in the original charges but was added as a result of testimony presented during the disbarment hearings. Subsequently, based upon the Ohio Supreme Court's decision, the Court of Appeals disbarred the attorney from practicing before the Court of Appeals. On certiorari the United States Supreme Court examined the Ohio Supreme Court's decision and finding it lacked due process, reversed the Court of Appeals decision, saying:

> "'This absence of fair notice as to the reach of the grievance procedure and the precise nature of the charges deprived petitioner of procedural due process.'
> [390 U.S. 552, 20 L.Ed.2d 123]."

In the leading case of Morgan v. United States of America, 304 U.S. 1, the Secretary of Agriculture of the United States held hearings as to the rates to be charged by market agencies at the Kansas City Stock Yards. Ten thousand pages of transcript on oral evidence and over one thousand pages of statistical exhibits were introduced. The government, however, did not disclose what its claims were. There was some argument. Following adjournment of the hearings the government combed through the record and prepared 180 elaborate findings, and submitted them to the Secretary, who signed them and made an order fixing the rates. The District Court dismissed bills of complaints by the agencies to set aside the order. In an opinion by Chief Justice Hughes the Supreme Court reversed, saying among other things:

> "The right to a hearing embraces not only the right to present evidence but also a reasonable opportunity to know the claims of the opposing party and to meet them. The right to submit argument implies that opportunity; otherwise the right may be but a barren one." [304 U.S. 18].

> "The requirements of fairness are not exhausted in the taking or consideration of evidence but extend to the concluding parts of the procedure as well as to the beginning and intermediate steps."
> [304 U.S. 20].

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In its opinion the Respondent reads into the amended notice to show cause a lot of facts and words that are not alleged therein. This is directly contrary to the Committee's order of September 6, 1972, wherein the Committee told the State Bar

> "* in view of the nature of this case and the history of it, particularly with respect to the pleadings, we are going to hold you to your Amended Notice, and we will not permit you to read into any allegations in Paragraph VI, for example, any facts or other words that you say are apparent when you look at the whole document as a whole. We expect you when you file your Notice, your Amended Notice, that you set forth whatever facts you expect to prove and set them forth sufficiently clearly and concisely that the Committee knows exactly what you intend to prove." [2 T. 117/3-13. Emphasis mine].

No Adequate Non-Federal Ground Available to Respondent.

I submit that Respondent cannot rely upon any adequate non-federal ground to justify the deprivation of due process of law guaranteed to me by the Fourteenth Amendment. Re Oliver, 333 U.S. 257, 273; Cole v. Arkansas, 333 U.S. 196, 201-202.

CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,

PAUL GOODSELL SULLINS

In Propria Persona

APPENDIX A

SUPREME COURT
FILED
DEC 1 1975
G.E.BISHEL, Clerk

_____
Deputy

C O P Y

IN THE SUPREME COURT OF

THE STATE OF CALIFORNIA

IN BANK

PAUL GOODSELL SULLINS,	)	
	)	
Petitioner,	)	
	)	L.A.
v.	)	30419
	)	
THE STATE BAR OF CALIFORNIA,	)	
	)	
Respondent.	)	
	)	

BY THE COURT

This is a proceeding to review a recommendation of the Disciplinary Board of the State Bar of California that petitioner be publicly

reproved. Petitioner presently is 69 years old, was admitted to practice in California in April 1953, and has no prior record of discipline in California or in Illinois, where he practised law from 1930 to 1953.

The disciplinary board's recommendation is based on findings by a local administrative committee of the State Bar that petitioner deliberately misled the Los Angeles County Superior Court by concealing the existence of a letter pertinent to a request by petitioner before the court. In the language of the disciplinary board's findings: "In failing to disclose to the Court the existence or content of the Fick letter, Respondent intended to and willfylly [sic] did in fact mislead the Court in connection with the Court's determination of Respondent's petition for approval of a fifty percent contingency fee with reference to Civil Action No. NEC 2141. In concealing these matters from the Court, Respondent withheld from the Court material facts bearing upon issues which were before the Court for decision."

The local administrative committee concluded that "[petitioner] violated his oath and duties as an attorney and counselor at law within the meaning of Section 6103 . . . of the Business and Professions Code[1] . . .; [he] wilfully

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[1] Section 6103 states in part: ". . . any violation of the oath taken by him, or of his duties as such attorney, constitute causes for disbarment or (con't)

violated Section 6128 . . . of the Business and Professions Code[2] . . .;" and "[he] committed acts involving moral turpitude and dishonesty within the meaning of Section 6106 . . . of the Business and Professions Code[3] . . . ." The local administrative committee then recommended that petitioner be suspended from the practice of law for a period of 90 days. The disciplinary board resolved merely to publicly reprove the

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[1] (con't)
suspension." According to Business and Professions Code section 6068: "It is the duty of an attorney: . . . (d) . . . never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law."

[2]
Section 6128 states: "Every attorney is guilty of a misdemeanor who . . . : (a) Is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party."

[3]
According to section 6106: "The commission of any act involving moral turpitude, dishonesty or corruption, . . . constitutes a cause for disbarment or suspension."

petitioner, however, by a vote of eight to five.[4/]

This case springs from a series of actions involving the residence of Mrs. Elizabeth Weber. On March 20, 1957, Mrs. Weber allegedly conveyed her Pasadena home (hereinafter "Brent Avenue Property") to herself and her sole surviving child, Mrs. Gladys Betty Heitz, by a joint tenancy grant deed. The Brent Avenue Property, valued at about $20,000, was Mrs. Weber's only substantial asset.

On May 20, 1963, Mrs. Weber, by then 74 years old and in a hospital recuperating from a stroke, signed a request that Reverend Thomas A. Williams be appointed temporary conservator for her. Mrs. Heitz, who herself desired to act as her mother's conservator, contested the proposed appointment of Williams. On September 6, 1963, the matter of the conservatorship of Elizabeth Weber received a hearing in Los Angeles Superior Court; petitioner Sullins represented Williams. Following the hearing, the superior court appointed

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4/ The five dissenting board members felt that the degree of discipline imposed by the recommended public reproof was insufficient; two of these dissenters stated that the board should recommend petitioner be suspended from the practice of law for 30 days. The board did not specifically adopt the foregoing conclusions of the local administrative committee.

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Mr. Williams permanent conservator. The court also questioned the effectiveness of the 1957 joint tenancy grant deed, on the grounds that it never had been delivered.[5/]

On these grounds Mrs. Weber, through her conservator Williams, on November 5, 1963 filed the Civil action No. NEC 2141 (hereinafter referred to as the "civil action") against Mrs. Heitz, seeking to set aside and cancel the purported March 1957 conveyance of the Brent Avenue Property. Petitioner represented the conservator in this civil action, which on December 20, 1963, resulted in a default judgment against Mrs. Heitz. On April 28, 1964, however, through the efforts of Mr. David Daar, her new counsel, Mrs. Heitz succeeded in having this default judgment set aside, and in securing permission to file an answer to the civil action complaint.

Mrs. Weber died on January 8, 1964, leaving a will dated September 19, 1963, drafted by petitioner. The will named Mrs. Weber's nephew Bradford Fick as sole beneficiary of her

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5/ The hearing produced testimony that the aforementioned March 20, 1957, joint tenancy grant deed, whose execution was attested to by a notary, had been recorded only on June 17, 1963, at the instigation of Mrs. Heitz who discovered the unrecorded deed among her mother's papers.

estate, specifically disinherited Mrs. Weber's daughter, and contained a no contest clause[6/] which forms the basis for one of petitioner's contentions. The will was admitted to probate; the court named Williams (whose conservatorship had terminated with Mrs. Weber's death) executor; petitioner continued to represent Williams. The court also substituted Williams as plaintiff in the civil action, in place of the deceased Mrs. Weber. Except for the possibility of obtaining the Brent Avenue property through success of the civil action, the assets of the estate were no more than about $350, less than the unpaid debts (funeral expenses, etc.).

Mrs. Heitz, represented by Daar, contested the will in a petition filed on April 30, 1964, alleging (inter alia) that at the time Mrs. Weber executed the will she had been incompetent and unduly influenced by Williams. Petitioner Sullins represented the estate in this will contest action. In addition, on or about June 4, 1964,

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6/
The no contest clause disinherited "any devisee, legatee, or any beneficiary under this will . . ., who . . . shall, in any manner whatsoever, directly or indirectly, contest this Will or attack, oppose or in any manner seek to impair or invalidate any provision thereof, or shall settle or compromise directly or indirectly, either in or out of court, with any such contestant, or shall acquiesce in or fail to oppose such proceedings. . . ."

pursuant to his duties as attorney for the executor, petitioner wrote to Mrs. Weber's nephew Bradford Fick, then age 56 and living in Chicago, Illinois, informing him of Mrs. Weber's will and the status of the estate.7/

Mr. Fick replied promptly in a notarized letter dated June 9, 1964, stating that he wished Mrs. Heitz to have all property under Mrs. Weber's will, and that he did not wish Mrs. Heitz to contest the will; the letter also asked petitioner to send Fick for signature any papers

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7/ Petitioner's letter to Fick read:

"Dear Sir:

"You may, or may not, be aware that you were named by your aunt, Elizabeth Weber, as the sole devisee under her will, which is now being probated here. The principal asset in her estate is the residence at 825 Brent Avenue South Pasadena, California.

"Contested litigation, however, is now going on between Mrs. Weber's daughter, Gladys Betty Heitz, and Thomas A. Williams, the Executor of Mrs. Weber's will. If Mrs. Heitz should be successful in this litigation, Mrs. Weber's estate would cease to hold said property as an asset, and you would receive nothing as devisee.

"I represent the Executor. If you should desire any further information relating to the matter, kindly let me hear from you."

needed to carry out Ficks' wishes.[8/] Petitioner's treatment of this leter from Fick is the main basis of the disciplinary board's findings against petitioner, portions of which findings were quoted above.

In particular, petitioner admits: that he did not reply to this letter of Fick's or otherwise acknowledge its receipt; that he made no effort to inform Mrs. Heitz of its contents; and that he never disclosed the letter's receipt or contents to the superior court, which in June 1964 had before it the civil action to set aside the 1957 conveyance, the probate of the Weber estate, and Mrs. Heitz's contest of her mother's will. On September 18. 1967, moreover, still without disclosing Fick's letter, petitioner sought and secured from the court approval of a 50 percent contingency fee agreement for petitioner's legal services pending in the civil action, explaining that a prior court approved 33-1/3 percent

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8/ The text of Fick's letter is as follows: "In answer to your letter dated June 4, 1964 that I am the sole devisee under the will left by my Aunt, Elizabeth Weber, and now in probate court, I wish to state that I do not wish my cousin, Gladys Betty Heitz, to contest this will, as I believe that any and all property left under this will is rightfully belonging to her, and if there are any papers to sign please forward them to me, and I will sign them over to her."

contingency fee agreement was inadequate because the civil action had been and would continue to be fiercely contested.[9/]

9/ Paragraph Five of the petition for a 50 percent contingency fee stated: "Considering all of the pertinent factors -- that said Cause No. NE C 2141 was filed nearly four years ago; that the cause of action is a contingent one; that the cause has already been carried to the District Court of Appeal and was remanded by that Court to the trial court for further proceedings: that the case has been and will undoubtedly . . . continue to be fiercely contested at every stage of the cause; that it will be necessary to fight the appeal by the said defendant, GLADYS BETTY HEITZ from the order entered by the Court on the 11th day of August, 1967, substituting petitioner as the plaintiff in said action; that there remains a great deal of discovery work to be done in the case; and that there will in all probability be a very vigorously and bitterly contested trial of the action, and possibly still further appeals to the higher courts -- these are some of the factors on which your petitioner bases his opinion that the agreement entered into by and between petitioner as Client and said PAUL GOODSELL SULLINS, as Attorney, is eminently fair to both parties thereto as well as to this estate, its creditors and the beneficiary under the Will of the decedent."

Shortly before the civil action was scheduled for trial, Fick came to Los Angeles at Daar's request[10] and testified at two depositions, in August and September 1968. His testimony revealed his 1964 exchange of correspondence with petitioner, affirmed that before Daar contacted him in 1968 Fick had never communicated with Mrs. Heitz or Mr. Daar concerning matters connected with Mrs. Weber's will, and reaffirmed Fick's intention to assign his interest in the estate to Mrs. Heitz; indeed Fick executed such an assignment on August 12, 1968.

Alluding to Fick's testimony, Mrs. Heitz petitioned the superior court for removal of the administrator of the estate[11] and his attorney

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10/ At the hearings conducted by the local administrative committee, Daar testified that he had contacted Fick in the summer of 1968 after Mrs. Heitz had expressed to Daar her surprise that Fick, "who loved her," was attempting to deprive her of the Brent Avenue Property; petitioner Sullins insisted that Daar knew about Fick's letter before Daar contacted Fick, through information somehow obtained in June 1964.

11/ Williams, the original executor of Mrs. Weber's estate died in 1966. Thereafter Richard S. Hubbell was appointed administrator with the will annexed, and was substituted for Williams as plaintiff in the civil action. Petitioner continued

(con't)

(petitioner Sullins). After a full hearing, the court on April 23, 1969, ordered the requested removal, and directed the public administrator to administer the estate. The court found that the administrator and petitioner Sullins had ". . . committed a fraud upon the Court, and the Estate . . ." when they presented the new agreement for attorney fees to the court without disclosing the existence of the letter or Fick's intention to make Mrs. Heitz the assignee of his interest in the estate. The court also found, "That neither petitioner Gladys Betty Heitz or her attorney learned that Bradford Fick had renounced all interest he had in the Estate in favor of Gladys Betty Heitz until during the month of July of 1968." The Court of Appeal affirmed the removal order in an unpublished opinion filed April 23, 1970. Petitioner Sullins did not request a rehearing, nor did he petition for a hearing from us.12/

11/ (con't)
to act as attorney for the estate throughout the proceedings.

12/
Although this Court of Appeal affirmation of petitioner's removal as attorney for the estate did not immediately terminate the bitter litigation between the parties, the ultimate disposition of the Brent Avenue Property now was predictable. On September 14, 1970, the superior court entered summary judgment for Mrs. Heitz in the civil action, finding that Mrs. Weber had, in fact, properly delivered the deed to her daughter; the
(con't)

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The disciplinary board's recommendation rests on the above recital of facts. Petitioner's numerous lengthy contentions in opposition to the recommendation may be consolidated and summarized as follows: (1) The local administrative committee and the disciplinary board permitted procedural irregularities which denied petitioner due process; in particular, the local administrative committee made findings, adopted by the disciplinary board, which involved matters not included in the State Bar's notice to show cause, as amended. (2) Mrs. Heitz's attorney David Daar had himself concealed from the court the existence of Fick's letter, which Daar had acquired shortly after it was written on June 9, 1964. (3) The no contest clause in the will implied that Fick forfeited his interest in the estate when he wrote petitioner offering to sign his interest over to Mrs. Heitz; alternatively, accepting his inheritance under the will estopped Fick from assigning his interest to Mrs. Heitz and thereby defeating Mrs. Weber's express disinheritance of her daughter. (4) Petitioner's duty to the creditors of Mrs. Weber's estate required him to press the civil action to cancel the deed, irrespective of Fick's intention to assign his interest in the estate to Mrs. Heitz; indeed, to avoid prejudicing this duty to the creditors, petitioner had to keep Fick's letter off the court records. These contentions will be

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12/ (con't)
public administrator represented the plaintiff estate.

examined seriatim.

Our standards of review of State Bar disciplinary recommendations are well established. In determining the appropriate discipline for an attorney's misconduct, this court independently appraises the evidence and makes its own evaluation, recognizing that the disciplinary board's findings and recommendations, though not binding, are entitled to great weight (In re Ellis (1974) 12 Cal. 3d 442 at 445); however, the burden is on petitioner to show that the board's recommendation is erroneous and unlawful (In re Silverton (1975) 14 Cal. 3d 517 at p. 523; 7 Cal. Jur. 3d Attorneys At Law, § 135, pp. 419-420).

Petitioner's contentions of procedural irregularities fail to meet this burden. State Bar Rules of Procedure applicable to proceedings before a local administrative committee (rule 29) and before the disciplinary board (rule 75) are identical in substance. Rule 29 provides in relevant part that: "No finding or recommendation of a committee made in a disciplinary proceeding shall be invalidated . . . for error in pleading, or in procedure, . . . unless upon the whole record . . . the board is of the opinion that error has been committed and has resulted or will result in miscarriage of justice." In Linnick v. State Bar (1964) 62 Cal. 2d 17 at p. 23, we interpreted rule 29 to mean that a variance between the board's findings and the notice to show cause would not be regarded as a miscarriage of justice if the petitioner in fact had sufficient notice to eliminate prejudicial surprise in the preparation

of his defense.

There are no grounds for belief that the procedures of the local administrative committee and the disciplinary board in any way prejudiced petitioner's defense to the charges against him. The hearings of the local administrative committee and the disciplinary board extended from July 12, 1972, to October 10, 1974; during these hearings petitioner was given full opportunity to argue his case and to make his very voluminous exhibits part of the record. All issues involved in the disciplinary board's findings were thoroughly argued in these hearings, as well as in various memoranda and briefs submitted by petitioner himself prior to the local administrative committee's report of its findings on May 20, 1974. The notice to show cause was twice amended at the urging of petitioner, in conformity with State Bar Rules of Procedure, rule 30. The violations of Business and Professions Code sections 6103, 6106 and 6128, asserted in the conclusions of the local administrative committee, were charged in the notice to show cause. In its original as well as its amended versions, the notice to show cause unmistakably charged that petitioner had concealed the existence of Fick's letter from the superior court; this concealment was a major element in the disciplinary board's findings. We conclude there is no merit to petitioner's first contention that he was denied due process by variances between the notice to show cause and the board's findings.

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Petitioner's second contention, that Mrs. Heitz's attorney David Daar had himself concealed knowledge of Fick's letter from the court, is irrelevant to the basic issue before this court, namely whether petitioner deserves discipline. As we said in Demain v. State Bar (1970) 3 Cal. 3d 381 at p. 386, "It has been uniformly held that the purpose of a disciplinary proceeding is not to punish the attorney but to inquire into the moral fitness of an officer of the court to continue in that capacity, and to afford protection to the public, the courts and the legal profession." Our decision in the present inquiry would not be affected even if it were proved that Daar had concealed knowledge of Fick's letter. On these grounds alone, petitioner's second contention is wholly without merit for the purposes of the instant proceedings. Moreover, in actuality the contention that Daar acquired a copy of Fick's June 9, 1964 letter shortly after it was written is against the weight of the evidence.13/ We

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13/
We reach this conclusion without having to give the required great weight to the evidence supporting the findings of the local administrative committee, who were able to observe the demeanor of witnesses (Sampson v. State Bar (1974) 12 Cal. 3d 70 at 74.) Petitioner does not explain away Fick's uncontradicted testimony that he never had mailed a copy of his letter to either Mrs. Heitz or Mr. Daar, and indeed never had
(con't)

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therefore reject, as pointless and against the evidence, petitioner's contention that Daar also concealed the existence of Fick's letter.

Petitioner's third contention -- that Fick's letter violated the no contest clause in the will, or alternatively that Fick was estopped from assigning his interest to Mrs. Heitz -- is used by Petitioner as an argument against the disciplinary board's finding, quoted earlier, that when he sought the 50 percent contingency fee agreement in September 1967 he withheld the material fact of Fick's letter from the court. Petitioner's argument is that since either of the above alternatives would prevent Fick from assigning the Brent Avenue Property to Mrs. Heitz, the letter actually was not material to issues before the court in September 1967.

We find this argument much more ingenious than convincing. This third contention of petitioner's, concerning which the disciplinary board made no specific finding, will not meet the

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13/ (con't)
heard of Daar before 1968; petitioner does not accuse Fick of untruthfulness or failure of memory. We remarked earlier that the court which in April 1969 ordered petitioner's removal as attorney for the estate agreed that Mrs. Heitz and Daar had not learned of Fick's letter until 1968; petitioner's arguments in this regard were aired before that court.

board's findings and charges that he intentionally deceived the court unless petitioner in September 1967 thought Fick had forfeited his claim to the estate, or believed that Fick was not free to assign his inheritance to Mrs. Heitz. There is no evidence that petitioner so thought or believed in September 1967; there is good evidence to the contrary.[14] Therefore, though we question the

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14/

At no time did petitioner notify Fick that Fick's June 1964 letter risked forfeiture of his inheritance, or that Fick's intended assignment to Mrs. Heitz of his interest might be barred by the will. In May 1967, when appointment of Hubbell as administrator with the will annexed was first requested (see fn. 11, ante, p. 9), petitioner Sullins certified that he served "Notice of Hearing upon BRADFORD FICK, the legatee and devisee named in the decedent's will"; no notices were served on other potential devisees, though such service would be expected if petitioner believed Fick had forfeited his inheritance. Petitioner referred to this "NOTICE upon BRADFORD FICK" in his May 1, 1972 answer to the State Bar's original notice to show cause, saying: "It is thus seen that the fact that I heard nothing whatsoever from Fick in response to my notice to him of May 8, 1967, and his subsequent letter of December 9, 1967, show[s] that he had long since abandoned any supposed idea of conveying his interest to Gladys Betty Heitz, if he ever had any such intention, which I deny, and was content that the action against her be continued

(con't)

claims that Fick's letter (see fn. 8, ante, p. 7) violated the no contest clause (see fn. 6, ante, p. 5), or that the will estopped Fick's assignment of his interest to Mrs. Heitz, we need not rule on the legitimacy of these claims. We conclude that petitioner's third contention, embodying these claims, is no defense to the disciplinary board's findings and charges against him.

Petitioner's fourth and last contention, that his duty to the estate's creditors required him to withhold Fick's letter from the court, is offered as a defense to the local administrative committee's finding that petitioner ". . . intended to and did in fact mislead the Court." The local administrative committee rejected this defense after full discussion, and incorporated into its findings the language that petitioner ". . . had

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14/ (con't)
unabated." In this same answer petitioner also stated, "I deny that Fick's letter of June 9, 1964, represented his intention to relinquish his interest in the estate to Gladys Betty Heitz." The theory that Fick was estopped from assigning his interest to Mrs. Heitz was not advanced by petitioner in any of his many prolix written memoranda and statement to the disciplinary board. A related theory, that Mrs. Heitz was estopped from becoming an assignee of Fick's was first advanced by petitioner on September 12, 1974, in his supplemental statement in opposition to the report of the local administrative committee.

OUGH

committed a fraud upon the Court," used by the court which ordered petitioner's removal as attorney for the estate.

The disciplinary board accepted this language, and also accepted the language of the Court of Appeal which in April 1970 affirmed the removal order: "The issue before the court on the petition for removal was not one of reweighing the issue of employment of counsel to recover the property; it was whether material facts bearing on the proposed contingent fee contract had been withheld from the court." Although the board did not specifically adopt the local administrative committee's conclusions, petitioner as an attorney is bound by the Business and Professions Code. Business and Professions Code sections 6068, subsection (d) and 6128, subsection (a) unqualifiedly require an attorney to refrain from acts which mislead or deceive the court (see fns. 1 and 2, ante, p. 2); petitioner admits he did not disclose the letter's receipt or its contents to the court. We conclude that petitioner's fourth contention concerning his duty to the estate's creditors is no defense to the charge that he intentionally deceived the court.

In summary, petitioner's contentions, taken as a whole, fail to meet his burden (In re Silverton (1975) 14 Cal.3d 517, at p. 523) of showing that the board's recommendation is erroneous or unlawful. We still must make our independent evaluation of the appropriateness of the board's recommended discipline however; petitioner's only request concerning the degree

ROUGH

of discipline is that the charges against him be entirely dismissed. The main finding against petitioner is that he intentionally misled the court. The amended notice to show cause and the board's findings imply petitioner misled the court for his own gain, an implication accepted by the State Bar;[15/] petitioner's fourth contention claims

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15/

Paragraph Five of the amended notice to show cause states: "Notwithstanding Mr. Fick's stated intention to relinquish his total interest, as sole beneficiary, in said estate to said Gladys Betty Heitz, you counseled and encouraged the continuance of said civil lawsuit against Gladys Betty Heitz because of your contingent fee interest therein." Paragraph Fifteen of the board's findings states: "On April 23, 1969, the Court . . . granting the petition for removal . . . found, inter alia, that Respondent had committed a fraud upon the Court in his failure to disclose the existence or content of the Bradford Fick letter to the Court and in the mismanagement of the Estate." The phrase "mismanagement of the Estate" is a reference to Daar's trial brief in this removal action, which argued that whereas the litigation to cancel the deed was needed to pay at most $2,000 in claims against the estate, successful cancellation of the deed would leave the estate and ultimately Mrs. Heitz (through Fick's assignment to her of his interest) with no more than half of the $20,000 value of the Brent Avenue Property, because half would go to petitioner Sullins as his fee. "This," said Daar's brief, "is mismanagement, constructive

(con't)

the deception stemmed from his conceived duty to the estate's creditors.

The rule is: "Charges of unprofessional conduct on the part of an attorney should be sustained by convincing proof and to a reasonable certainty, and reasonable doubts must be resolved in the attorney's favor" (Bluestein v. State Bar (1975) 13 Cal. 3d 162 at p. 168).

We need not pass upon the issue of whether the petitioner misled the court "for his own gain, "16/

15/ (con't)
fraud, waste of property of the Estate in maintaining such action, and wholly inequitable." The State Bar's brief in the instant case, citing the fact that the civil action eventually resulted in summary judgment for Mrs. Heitz, asserts: "The evidence irresistably establishes that Petitioner deceived the court, and that he did so with a view to his own financial gain."

16/
The court which appointed a conservator for Mrs. Weber in September 1963 questioned the effectiveness of Mrs. Heitz's deed and recommended the civil action against her. (See fn. 5, ante, p. 4) The Court of Appeal which in April 1970 affirmed the removal order wrote: "Mr. Fick's letter did not absolve appellant Hubbell of the statutory duty to take possession of all of the decedent's estate and collect all debts due her (Prob. Code, § 571) in order that the expenses
(con't)

because we have concluded that petitioner's conduct in misleading the court, in itself, called for discipline. Although in analogous cases the

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16/ (con't)
of administration and debts of the estate could be paid (Prob. Code, §§ 951 and 952). While Mr. Fick could assign his interest in the estate, he could not free it from the process of administration. The mere fact that he no longer claimed an interest in debts owing to the estate did not free its representative from the duty to collect them. If Gladys Heitz held property belonging to the estate, it was appellant Hubbell's duty to gain possession thereof and only redistribute it to her in due course of administration, after all disbursements from the estate had been made in compliance with the law. The existence of the letter from Mr. Fick was therefore of no relevance to the determination of whether recovery of the asset was in the best interests of the estate. The failure to disclose it, however, constituted fraud under Probate Code section 521." Moreover, Daar's brief (see fn. 15, ante, pp. 19-20) did not point out that the fee Daar had arranged with Mrs. Heitz in April 1964, before petitioner Sullins received Fick's letter, was an unqualified half share in Mrs. Heitz's interest in the Brent Avenue Property; thus, despite the eventual dismissal of the civil action, Mrs. Heitz ultimately retained only half the value of the property.

discipline imposed has been more severe,[17] the disciplinary board, in recommending public reproval, undoubtedly took into account the petitioner's age, his previous 45-year unblemished record as an attorney, and has had the advantage of personal observation of petitioner.

17/

There are few not outdated cases solely involving intentional deception of the court by an attorney not for his own gain, wherein the attorney had no prior record of misconduct. In McMahon v. State Bar (1952) 39 Cal.2d 367, petitioner received a 60-day suspension for withholding from the probate court knowledge he had concerning the execution of a will when he presented an allegation of intestacy; petitioner was attempting to advance his client's interests. In Pickering v. State Bar (1944) 24 Cal.2d 141, petitioner received a year's suspension for knowingly filing a complaint asserting facts he knew to be untrue, although apparently without motive of personal gain. In Paine v. State Bar (1939) 14 Cal.2d 150, petitioner was suspended for six months for misleading the court by filing a false document in a probate proceeding, without any finding of intent to personally profit thereby.

Under these circumstances we are satisfied that a public reproval constitutes an appropriate discipline. It is therefore ordered that Paul Goodsell Sullins be publicly reproved by publication of this opinion.

I, G. E. BISHEL, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of: "opinion"

as shown by the records of my office.

Witness my hand and the seal of the Court this "17th" day of "February" 19 "76"

G. E. BISHEL, Clerk

By: "R. Johnson" Deputy

ORDER DUE
December 31, 1975

ORDER DENYING REHEARING

L.A. No. 30419

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

SULLINS

v.

THE STATE BAR OF CALIFORNIA

Petition

for rehearing DENIED.

I, G. E. BISHEL, Clerk of the Supreme Court of the State of California, do hereby certify that the foregoing is a true copy of the order of said Court, as shown by the records of my office.

Witness my hand and the seal of the Court this 17th day of February A.D. 1976

G. E. Bishel
Clerk

By L. Johnson
Deputy Clerk

SUPREME COURT
FILED
FEB 05 1976
C. E. BISHEL

Chief Justice

Supreme Court, U.S.
FILED
MAR 29 1976
MICHAEL RODAK, JR., CLERK

In The

Supreme Court of the United States

October Term, 1975

No. 75-1227

PAUL GOODSELL SULLINS, *Petitioner,*
v.
THE STATE BAR OF CALIFORNIA, *Respondent.*

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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PAUL GOODSELL SULLINS, *Petitioner,*
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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

PRELIMINARY STATEMENT AND DECISION BELOW

This is a brief in opposition to a Petition for Writ of Certiorari (28 U.S.C. § 1257(3)) to review a reported decision of the Supreme Court of California in an attorney disciplinary matter. Sullins v. State Bar (1974) 15 Cal.3d 609, 125 Cal. Rptr. 471, 542 P.2d 631 (rehearing denied by minute order of December 30, 1975).[1]

[1] In the State of California, the admission of attorneys to practice law and their
(footnote continued)

For convenience of this Court, a copy of

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discipline are vested exclusively within the inherent power of the Supreme Court of California (not a party to this Certiorari proceeding). RESPONDENT, The State Bar, has no power to suspend or disbar an attorney licensed in California. Only the Supreme Court of California may do so. Such Supreme Court action follows its independent review of the record of disciplinary proceedings and its exercise of its independent judgment. See, among many cases, Yokozeki v. State Bar (1974) 11 Cal.3d 436, 443; 113 Cal.Rptr. 602, 521 P.2d 858, Cert.den. 419 U.S. 900; Bernstein v. State Bar (1972) 6 Cal.3d 909, 916, 101 Cal.Rptr. 369, 495 P.2d 1289; Arden v. State Bar (1959) 52 Cal.2d 310, 315-316, 341 P.2d 6.

RESPONDENT State Bar is a public corpration within the judicial branch of California government. Cal. Constitution, Art. VI, Sec. 9; Cal. Business and Professions Code, sections 6001-6008. In part, RESPONDENT assists the Supreme Court of California as that Court's "administrative arm" in receiving complaints against attorneys from members of the public, in receiving applications for admission to practice law and in conducting appropriate proceedings and hearings thereon leading to recommendations to the Supreme Court of California for the admission, discipline or reinstatement of attorneys in this State. Cal. Business and Professions Code, sections 6040-6117; e.g., Brotsky v. State Bar (1962) 57 Cal.2d 287, 300-301, 19 Cal. Rptr. 153, 386 P.2d 697; Chronicle Publishing Co. v. Superior Court (1960) 54 Cal. 2d 548 565-566, 7 Cal.Rptr.109, 354 P.2d 637.

BLEED THROUGH

the decision below is attached as an Appendix.

In the decision below, the Supreme Court of California disciplined PETITIONER, a California attorney, by public reproval. See Appendix, p. 14. Neither disbarment nor suspension of PETITIONER'S license to practice law in California was ordered by the Supreme Court of California. The decision below is now effective. No stay is in effect, PETITIONER'S application to Mr. Justice Rehnquist for a stay having been denied on February 23, 1976.

RESPONDENT'S STATEMENT OF THE CASE

Under California law, RESPONDENT[2] is empowered to impose a reproval upon a

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[2] PETITIONER wrote and captioned his petition as if the Supreme Court of California were the only Respondent. However, the Office of the Clerk of the Supreme Court of the United States requested PETITIONER to re-caption his petition to name the State Bar of California as the only Respondent. PETITIONER did re-caption his petition as requested but the body of his petition refers to the Supreme Court throughout as the Respondent. This Brief in Opposition uses the term "RESPONDENT" to refer solely to the State Bar of California.

California attorney upon the grounds provided by law, following the conclusion of formal disciplinary proceedings. Cal. Business and Professions Code, section 6078. The reproved attorney may petition the Supreme Court of California for review of RESPONDENT'S decision reproving him. Cal. Business and Professions Code, section 6083(c); rule 952(c), Cal. Rules of Court.

After RESPONDENT'S Disciplinary Board publicly reproved PETITIONER (see Appendix, p. 5), he sought California Supreme Court review. That Court granted review and thereupon exercised its independent judgment on the evidence. See Appendix, p. 9; see authorities cited supra, p. 2, fn. 1.

In the Petition for Certiorari, PETITIONER does not dispute the legal sufficiency of the evidence to sustain the decision of the Supreme Court of California publicly reproving him.

Accordingly, RESPONDENT respectfully adopts the complete statement of pertinent facts contained in the opinion of the Supreme Court of California and RESPONDENT

BLEED THROUGH

respectfully refers this Court to that statement of facts which clearly demonstrates the convincing nature of the evidence abundantly supporting the decision reproving PETITIONER. Appendix, pp. 4-9.

In substance, the basis of the public reproval imposed on PETITIONER by the Supreme Court of California is that PETITIONER violated specific sections of the California Business and Professions Code binding on California attorneys in that he intentionally misled the Los Angeles County Superior Court by concealing from that Court the existence of a letter pertinent to that Court's decision on a petition presented by PETITIONER. Appendix, pp. 4-5, 10, 12-14.

The two questions presented by PETITIONER to this Court are very narrow in scope. In essence, they each concern only the extent of the notice afforded to PETITIONER of the nature of the formal disciplinary charges against him.

Petition at pp. 3-4.

In evaluating the two questions PETITIONER presents, the nature of

RESPONDENT'S formal disciplinary proceedings are important.

The Supreme Court of California has held that attorney disciplinary proceedings conducted by RESPONDENT are governed exclusively by the Rules of Procedure of the State Bar, Schullman v. State Bar (1973) 10 Cal.3d 526, 537, 111 Cal.Rptr. 161, 516 P.2d 865. Further, California's highest court has observed that these Rules of Procedure of the State Bar (foll. Cal. Business and Professions Code section 6087), provide a "panoply of legal protection" to an attorney accused of professional misconduct and insure that administrative due process will be observed. Schullman, supra, 10 Cal.3d at 537.

In Schullman, supra, the Court stated as follows as to the procedural safeguards to an accused attorney in a formal disciplinary proceeding:

> "...The rules provide for adequate notice of charges, and allow attorneys an opportunity to be heard, to present a defense, to engage in discovery, to present evidence, to subpoena books and records, as well as to confront and cross-

BLEED THROUGH

> examine witnesses. (Bus. & Prof. Code, § 6085; see generally, [former] Rules of Procedure, rules 8-42; 6 Cal. Jur.2d Rev., Attorneys at Law, § 200 et seq.)"
> (Emp. added). 10 Cal.3d at 537.

It is undisputed that PETITIONER took liberal advantage of the procedural protection afforded him. It is undisputed that he introduced voluminous documentary evidence, that he presented his own witnesses and he cross-examined the State Bar's witnesses at length. Cf. Appendix, p. 10.

Concerning the only issue raised in this Court by the Petition for Certiorari -- the adequacy of the notice to PETITIONER of the formal disciplinary charges against him -- again, the record is undisputed. The record reveals as follows: On April 7, 1972, PETITIONER was served with a four-page statement of formal disciplinary charges entitled "Notice to Show Cause." Under the Rules of Procedure of the State Bar, (former rule 25, present rule 14.20) it is this Notice to Show Cause which commenced the formal disciplinary proceeding.

At PETITIONER'S request, the Notice to Show Cause was twice amended, on July 24, 1972 and on September 18, 1972. No testimony by PETITIONER'S witnesses or by State Bar witnesses was received on the merits of the charges until after both amendments to the Notice to Show Cause had been made.

It is further undisputed that the original and both amended forms of the Notice to Show Cause unmistakably charged that PETITIONER had concealed the existence of a specific letter from the Superior Court. This act of concealment was a major element in RESPONDENT'S findings of PETITIONER'S culpability and it was the essential factual basis of the California Supreme Court's public reproval of PETITIONER. Appendix, pp. 4-5, 10, 12-14.

ARGUMENT

THE DECISION BELOW BY THE SUPREME COURT OF CALIFORNIA IS LEGALLY CORRECT AND PETITIONER HAS PRESENTED NO SPECIAL AND IMPORTANT REASONS FOR GRANTING CERTIORARI.

Petitioner seeks certiorari from a decision of California's highest court in

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an attorney disciplinary proceeding. In that connection, we respectfully commend to this Court the observation of Mr. Justice Frankfurter writing for the Court in Theard v. United States (1957) 354 U.S.278, 281, that except within "narrow limits," it is not for this Court to sit in judgment on state court attorney disciplinary proceedings.

PETITIONER seeks this Court's review only on the issue of adequacy of notice of the formal disciplinary charges against him. But it is clear from the record that PETITIONER did receive formal, written and detailed notice of the formal charges which constituted the basis of the California Supreme Court's finding of PETITIONER'S culpability and its decision reproving him.

The following excerpt from the decision below demonstrates that the California Supreme Court fully considered essentially the same claim by PETITIONER of deprivation of due process of law as he has urged before this Court, and the California Supreme Court correctly determined that PETITIONER'S claim was without merit:

"There are no grounds for belief that the procedures of the local administrative committee and the disciplinary board in any way prejudiced petitioner's defense to the charges against him. The hearings of the local administrative committee and the disciplinary board extended from July 12, 1972 to October 10, 1974; during these hearings, petitioner was given full opportunity to argue his case and to make his very voluminous exhibits part of the record. All issues involved in the disciplinary board's findings were thoroughly argued in these hearings, as well as in various memoranda and briefs submitted by petitioner himself prior to the local administrative committee's report of its findings on May 20, 1974. The notice to show cause was twice amended at the urging of petitioner, in conformity with the State Bar Rules of Procedure, rule 30. The violations of Business and Professions Code sections 6103, 6106 and 6128, asserted in the conclusions of the local administrative committee, were charged in the notice to show cause. In its original as well as its amended versions, the notice to show cause unmistakably charged that

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> petitioner had concealed the existence of Fick's letter from the superior court; this concealment was a major element in the disciplinary board's findings. We conclude there is no merit to petitioner's first contention that he was denied due process by variances between the notice to show cause and the board's findings." (Single underlining indicates Emp. added; double underlining indicates Emp. in original). Appendix, p. 10.

PETITIONER'S citation of In re Ruffalo (1968) 390 U.S.544 (Petition, p. 21), does not aid him and, in any event, his discussion of the case does not reflect the vastly different fact situation posed by the record in Ruffalo. The attorney in Ruffalo was disciplined by a federal court solely on a charge which was added to the statement of formal charges in the state disciplinary proceedings after the attorney had given testimony in defense of the formal state disciplinary charges. 390 U.S. at 546-547, 550. This Court held that such a procedure constituted a want of fair notice such that it deprived the attorney of procedural due process. 390 U.S. at 552.

In marked contrast to Ruffalo, PETITIONER Sullins unmistakably had before him a written statement of the formal charges which formed the basis of his discipline prior to the time that either he or the State Bar had presented any evidence. Moreover, it is undisputed that PETITIONER did not even begin to testify on the merits of the disciplinary charges until both amendments to the Notice to Show Cause — which amendments he requested — had been made.

PETITIONER has also contended in the Petition for Certiorari at pp. 4, 16-18, that he was found guilty of misconduct by the Supreme Court of California on a number of facts and offenses not contained in the amended Notice to Show Cause. This contention is wholly without merit.

The opinion below states on its face the factual basis for PETITIONER'S public reproval. Appendix, pp. 4-5, 10, 12-14. The charge putting PETITIONER on notice as to the ultimate basis for his reproval was always included in the original and amended Notices to Show Cause. No prejudice, whatever, has been demonstrated by PETITIONER.

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CONCLUSION

For the foregoing reasons, RESPONDENT respectfully submits that PETITIONER has failed to present any substantial federal question incorrectly decided below. We submit that the decision below is fully correct and there are no special or important reasons presented for granting certiorari. Rules 19(1) and 24(1), Rules of the Supreme Court of the United States. RESPONDENT respectfully submits that certiorari should be denied.

Respectfully submitted,
Herbert M. Rosenthal
Ronald W. Stovitz

By _____
Ronald W. Stovitz

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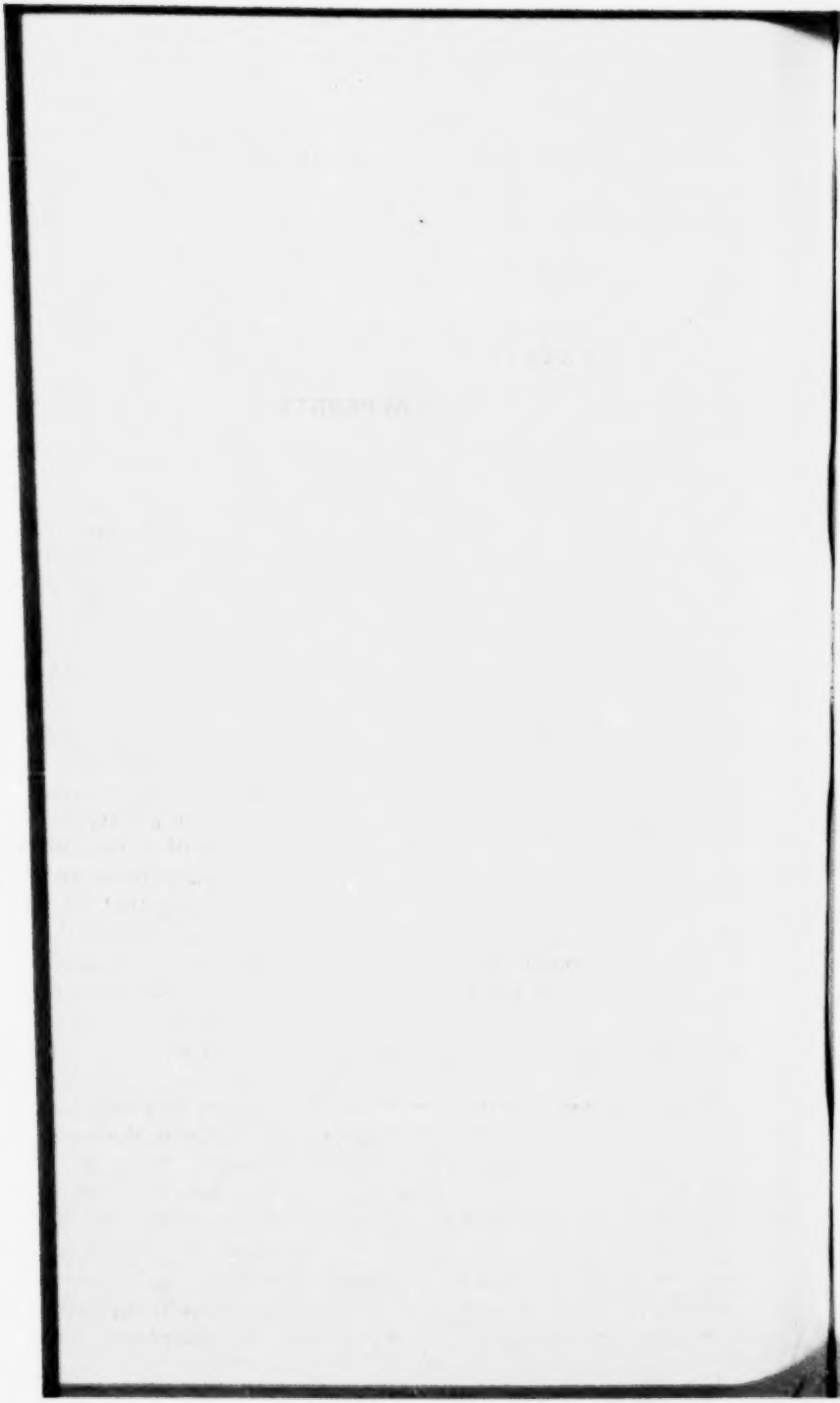
Dated: March 22, 1976



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[L.A. No. 30419. In Bank. Dec. 1, 1975.]

PAUL GOODSELL SULLINS, Petitioner, v.
THE STATE BAR OF CALIFORNIA, Respondent.

SUMMARY

The Disciplinary Board of the State Bar recommended that an attorney be publicly reproved for his conduct in misleading a trial court in a civil matter by concealing his receipt of a letter from an interested party. The attorney was at the time representing the executor of a decedent's estate and was attempting to set aside a purported conveyance of her residence property (the sole asset of the estate) to her daughter. The action was commenced during the lifetime of the decedent, whose will named a nephew living out of state as sole devisee. Upon being notified of that fact after the decedent's death, the nephew had written a letter to the attorney stating, in effect, that he wished to renounce any interest in favor of the decedent's daughter. The attorney did not reply to the letter and did not disclose its contents to the daughter or to the court. He later sought and secured court approval of an increase in his contingent fee in the action to set aside the conveyance, representing that the matter was, and would continue to be, vigorously contested. When the nephew's letter was brought to light by counsel for the daughter, a successor administrator and the attorney were removed by the court and the order of removal was affirmed on appeal. The disciplinary board found that the attorney had misled the court for his own gain.

The Supreme Court ordered that the attorney be publicly reproved by publication of its opinion. The court did not pass on the issue of whether the attorney's actions were "for his own gain," holding that his conduct in misleading the court, in itself, called for discipline. Though it noted that the discipline imposed in analogous cases had been more severe, it pointed out that the board had had the advantage of personal observation of the attorney and that it had undoubtedly taken into account that he was 69 years old and had a previous 45-year unblemished record as an attorney. The court fully considered the attorney's contentions of

procedural irregularities, that opposing counsel had also concealed the letter, that the letter was immaterial because of a no contest clause in the decedent's will, and that he had a duty to the estate's creditors to conceal the letter, and it held that such contentions, taken as a whole, failed to meet the attorney's burden of showing that the board's recommendation was erroneous or unlawful. (Opinion by The Court.)

HEADNOTES

Classified to California Digest of Official Reports, 3d Series

(1) **Attorneys at Law § 53—Review of Disciplinary Proceedings by Supreme Court—Scope.**—In determining the appropriate discipline for an attorney's misconduct, the Supreme Court independently appraises the evidence and makes its own evaluation, recognizing that the disciplinary board's findings and recommendations, though not binding, are entitled to great weight. The burden is on the accused attorney to show that the board's recommendation is erroneous or unlawful.

(2) **Attorneys at Law § 50—Discipline—Proceedings Before Local Committee and State Board—Conduct of Hearing.**—On review of a recommendation of the Disciplinary Board of the State Bar that an attorney be publicly reproved, the accused attorney failed to establish that such recommendation was unlawful or erroneous on the basis of alleged procedural irregularities, where there was no showing that the procedures of the local administrative committee and the disciplinary board in any way prejudiced the attorney's defense to the charge against him, where the hearings of those bodies extended for almost three months and the attorney was given full opportunity to argue his case and to make his very voluminous exhibits part of the record, where all issues involved in the disciplinary board's findings were thoroughly argued in the hearings, as well as in memoranda and briefs and briefs submitted by the accused prior to the local committee's report of its findings, and where statutory violations asserted in the conclusions of the local committee were charged in the notice to show cause.

(3a, 3b) **Attorneys at Law § 37—Discipline—Grounds and Defenses—False Testimony and Misconduct Toward Court or Bar.**—On review of a recommendation of the Disciplinary Board of the State Bar that

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an attorney be publicly reproved, the attorney's contention that a letter he was accused of concealing from the court in a civil action was also concealed by opposing counsel was, in addition to being against the weight of the evidence, irrelevant to the issue of whether the attorney deserved discipline. The decision on that issue would not be affected even if it were proved that opposing counsel concealed knowledge of the letter.

(4) **Attorneys at Law § 47—Discipline—Proceedings Before Local Committee and State Board—Nature and Purpose.**—The purpose of a proceeding for discipline of an attorney is not to punish the accused attorney but to inquire into the moral fitness of an officer of the court to continue in that capacity, and to afford protection to the public, the courts, and the legal profession.

(5) **Attorneys at Law § 37—Discipline—Grounds and Defenses—Misconduct Toward Court—Misleading Court.**—In disciplinary proceedings arising out of an attorney's having allegedly intentionally deceived a trial court in a civil matter by concealing a letter from a decedent's devisee purporting to renounce all interest in the estate, at a time when the attorney sought an increase in his contingent fee, the accused could not successfully defend on a theory that the letter was ineffective in view of a no contest clause in the will and was therefore immaterial to issues before the court, where there was no evidence that the attorney believed at that time that the devisee had forfeited his claim to the estate or that he was not free to assign his inheritance to a daughter of the decedent, and there was good evidence to the contrary.

(6) **Attorneys at Law § 37—Discipline—Grounds and Defenses—Misconduct Toward Court—Misleading Court.**—In disciplinary proceedings arising out of an attorney's having allegedly intentionally deceived a trial court in a civil matter by concealing a letter from a decedent's devisee purporting to renounce all interest in the estate, at a time when the attorney sought an increase in his contingent fee, the accused could not successfully defend on a theory that the letter would prejudice claims of creditors of the decedent's estate and that he had a duty to withhold it, where he admitted that he did not disclose the letter's receipt or its contents to the court. Under Bus. & Prof. Code, §§ 6068, subd. (d), 6128, subd. (a), an attorney has an unqualified duty to refrain from acts which mislead or deceive the court.

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(7a, 7b) Attorneys at Law § 58—Review of Disciplinary Proceedings by Supreme Court—Appropriateness of Public Reproval.—Public reproval, as recommended by the Disciplinary Board of the State Bar, constituted appropriate discipline of an attorney for misleading a trial court in a civil matter by his concealment of a letter he had received from a person involved in the litigation. Whether or not the attorney's action was "for his own gain," as found by the board, his conduct in misleading the court, in itself, called for discipline, and, though the discipline imposed in analogous cases has been more severe, the board had the advantage of personal observation of the attorney, and undoubtedly took into account that he was 69-years-old and had a previous 45-year unblemished record as an attorney.

[See **Cal.Jur.3d,** Attorneys at Law, § 72; **Am.Jur.2d,** Attorneys At Law, § 27.]

(8) Attorneys at Law § 49—Discipline—Proceedings Before Local Committee and State Board—Evidence.—Charges of unprofessional conduct on the part of an attorney should be sustained by convincing proof and to a reasonable certainty, and reasonable doubts must be resolved in the attorney's favor.

COUNSEL

Paul Goodsell Sullins, in pro. per., for Petitioner.

Herbert M. Rosenthal and Arthur L. Margolis for Respondent.

OPINION

THE COURT.—This is a proceeding to review a recommendation of the Disciplinary Board of the State Bar of California that petitioner be publicly reproved. Petitioner presently is 69 years old, was admitted to practice in California in April 1953, and has no prior record of discipline in California or in Illinois, where he practiced law from 1930 to 1953.

The disciplinary board's recommendation is based on findings by a local administrative committee of the State Bar that petitioner deliber-

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ately misled the Los Angeles County Superior Court by concealing the existence of a letter pertinent to a request by petitioner before the court. In the language of the disciplinary board's findings: "In failing to disclose to the Court the existence or content of the Fick letter, Respondent intended to and willfylly [*sic*] did in fact mislead the Court in connection with the Court's determination of Respondent's petition for approval of a fifty percent contingency fee with reference to Civil Action No. NEC 2141. In concealing these matters from the Court, Respondent withheld from the Court material facts bearing upon issues which were before the Court for decision."

The local administrative committee concluded that "[petitioner] violated his oath and duties as an attorney and counselor at law within the meaning of Section 6103 . . . of the Business and Professions Code[1] . . .; [he] wilfully violated Section 6128 . . . of the Business and Professions Code[2] . . ."; and "[he] committed acts involving moral turpitude and dishonesty within the meaning of Section 6106 . . . of the Business and Professions Code [3] . . . ." The local administrative committee then recommended that petitioner be suspended from the practice of law for a period of 90 days. The disciplinary board resolved merely to publicly reprove the petitioner, however, by a vote of eight to five.[4]

This case springs from a series of actions involving the residence of Mrs. Elizabeth Weber. On March 20, 1957, Mrs. Weber allegedly conveyed her Pasadena home (hereinafter "Brent Avenue Property") to herself and her sole surviving child, Mrs. Gladys Betty Heitz, by a joint tenancy grant deed. The Brent Avenue Property, valued at about $20,000, was Mrs. Weber's only substantial asset.

[1]Section 6103 states in part: ". . . any violation of the oath taken by him, or of his duties as such attorney, constitute causes for disbarment or suspension." According to Business and Professions Code section 6068: "It is the duty of an attorney: . . . (d) . . . never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law."

[2]Section 6128 states: "Every attorney is guilty of a misdemeanor who . . .: (a) Is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party."

[3]According to section 6106: "The commission of any act involving moral turpitude, dishonesty or corruption, . . . constitutes a cause for disbarment or suspension."

[4]The five dissenting board members felt that the degree of discipline imposed by the recommended public reproof was insufficient; two of these dissenters stated that the board should recommend petitioner be suspended from the practice of law for 30 days. The board did not specifically adopt the foregoing conclusions of the local administrative committee.

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On May 20, 1963, Mrs. Weber, by then 74 years old and in a hospital recuperating from a stroke, signed a request that Reverend Thomas A. Williams be appointed temporary conservator for her. Mrs. Heitz, who herself desired to act as her mother's conservator, contested the proposed appointment of Williams. On September 6, 1963, the matter of the conservatorship of Elizabeth Weber received a hearing in Los Angeles Superior Court; petitioner Sullins represented Williams. Following the hearing, the superior court appointed Mr. Williams permanent conservator. The court also questioned the effectiveness of the 1957 joint tenancy grant deed, on the grounds that it never had been delivered.[5]

On these grounds Mrs. Weber, through her conservator Williams, on November 5, 1963, filed the civil action No. NEC 2141 (hereinafter referred to as the "civil action") against Mrs. Heitz, seeking to set aside and cancel the purported March 1957 conveyance of the Brent Avenue Property. Petitioner represented the conservator in this civil action, which on December 20, 1963, resulted in a default judgment against Mrs. Heitz. On April 28, 1964, however, through the efforts of Mr. David Daar, her new counsel, Mrs. Heitz succeeded in having this default judgment set aside, and in securing permission to file an answer to the civil action complaint.

Mrs. Weber died on January 8, 1964, leaving a will dated September 19, 1963, drafted by petitioner. The will named Mrs. Weber's nephew Bradford Fick as sole beneficiary of her estate, specifically disinherited Mrs. Weber's daughter, and contained a no contest clause[6] which forms the basis for one of petitioner's contentions. The will was admitted to probate; the court named Williams (whose conservatorship had terminated with Mrs. Weber's death) executor; petitioner continued to represent Williams. The court also substituted Williams as plaintiff in the civil action, in place of the deceased Mrs. Weber. Except for the possibility of obtaining the Brent Avenue property through success of the civil action, the assets of the estate were no more than about $350, less than the unpaid debts (funeral expenses, etc.).

[5]The hearing produced testimony that the aforementioned March 20, 1957, joint tenancy grant deed, whose execution was attested to by a notary, had been recorded only on June 17, 1963, at the instigation of Mrs. Heitz who discovered the unrecorded deed among her mother's papers.

[6]The no contest clause disinherited "any devisee, legatee, or any beneficiary under this will . . ., who . . . shall, in any manner whatsoever, directly or indirectly, contest this Will or attack, oppose or in any manner seek to impair or invalidate any provision thereof, or shall settle or compromise directly or indirectly, either in or out of court, with any such contestant, or shall acquiesce in or fail to oppose such proceedings. . . ."

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Mrs. Heitz, represented by Daar, contested the will in a petition filed on April 30, 1964, alleging (inter alia) that at the time Mrs. Weber executed the will she had been incompetent and unduly influenced by Williams. Petitioner Sullins represented the estate in this will contest action. In addition, on or about June 4, 1964, pursuant to his duties as attorney for the executor, petitioner wrote to Mrs. Weber's nephew Bradford Fick, then age 56 and living in Chicago, Illinois, informing him of Mrs. Weber's will and the status of the estate.[7]

Mr. Fick replied promptly in a notarized letter dated June 9, 1964, stating that he wished Mrs. Heitz to have all property under Mrs. Weber's will, and that he did not wish Mrs. Heitz to contest the will; the letter also asked petitioner to send Fick for signature any papers needed to carry out Fick's wishes.[8] Petitioner's treatment of this letter from Fick is the main basis of the disciplinary board's findings against petitioner, portions of which findings were quoted above.

In particular, petitioner admits: that he did not reply to this letter of Fick's or otherwise acknowledge its receipt; that he made no effort to inform Mrs. Heitz of its contents; and that he never disclosed the letter's receipt or contents to the superior court, which in June 1964 had before it the civil action to set aside the 1957 conveyance, the probate of the Weber estate, and Mrs. Heitz's contest of her mother's will. On September 18, 1967, moreover, still without disclosing Fick's letter, petitioner sought and secured from the court approval of a 50 percent contingency fee agreement for petitioner's legal services pending in the civil action, explaining that a prior court approved 33⅓ percent

[7]Petitioner's letter to Fick read:

"Dear Sir:

"You may, or may not, be aware that you were named by your aunt, Elizabeth Weber, as the sole devisee under her will, which is now being probated here. The principal asset in her estate is the residence at 825 Brent Avenue, South Pasadena, California.

"Contested litigation, however, is now going on between Mrs. Weber's daughter, Gladys Betty Heitz, and Thomas A. Williams, the Executor of Mrs. Weber's will. If Mrs. Heitz should be successful in this litigation, Mrs. Weber's estate would cease to hold said property as an asset, and you would receive nothing as devisee.

"I represent the Executor. If you should desire any further information relating to the matter, kindly let me hear from you."

[8]The text of Fick's letter is as follows: "In answer to your letter dated June 4, 1964 that I am the sole devisee under the will left by my Aunt, Elizabeth Weber, and now in probate court, I wish to state that I do not wish my cousin, Gladys Betty Heitz, to contest this will, as I believe that any and all property left under this will is rightfully belonging to her, and if there are any papers to sign please forward them to me, and I will sign them over to her."

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contingency fee agreement was inadequate because the civil action had been and would continue to be fiercely contested.[9]

Shortly before the civil action was scheduled for trial, Fick came to Los Angeles at Daar's request[10] and testified at two depositions, in August and September 1968. His testimony revealed his 1964 exchange of correspondence with petitioner, affirmed that before Daar contacted him in 1968 Fick had never communicated with Mrs. Heitz or Mr. Daar concerning matters connected with Mrs. Weber's will, and reaffirmed Fick's intention to assign his interest in the estate to Mrs. Heitz; indeed Fick executed such an assignment on August 12, 1968.

Alluding to Fick's testimony, Mrs. Heitz petitioned the superior court for removal of the administrator of the estate[11] and his attorney (petitioner Sullins). After a full hearing, the court on April 23, 1969, ordered the requested removal, and directed the public administrator to administer the estate. The court found that the administrator and petitioner Sullins had ". . . committed a fraud upon the Court, and the Estate . . ." when they presented the new agreement for attorney fees to the court without disclosing the existence of the letter or Fick's intention to make Mrs. Heitz the assignee of his interest in the estate. The court also found, "That neither petitioner Gladys Betty Heitz or her attorney

[9]Paragraph Five of the petition for a 50 percent contingency fee stated: "Considering all of the pertinent factors—that said Cause No. NE C 2141 was filed nearly four years ago; that the cause of action is a contingent one; that the cause has already been carried to the District Court of Appeal and was remanded by that Court to the trial court for further proceedings: that the case has been and will undoubtedly . . . continue to be fiercely contested at every stage of the cause; that it will be necessary to fight the appeal by the said defendant, GLADYS BETTY HEITZ from the order entered by the Court on the 11th day of August, 1967, substituting petitioner as the plaintiff in said action; that there remains a great deal of discovery work to be done in the case; and that there will in all probability be a very vigorously and bitterly contested trial of the action, and possibly still further appeals to the higher courts—these are some of the factors on which your petitioner bases his opinion that the agreement entered into by and between petitioner as Client and said PAUL GOODSELL SULLINS, as Attorney, is eminently fair to both parties thereto as well as to this estate, its creditors and the beneficiary under the Will of the decedent."

[10]At the hearings conducted by the local administrative committee, Daar testified that he had contacted Fick in the summer of 1968 after Mrs. Heitz had expressed to Daar her surprise that Fick, "who loved her," was attempting to deprive her of the Brent Avenue Property; petitioner Sullins insisted that Daar knew about Fick's letter before Daar contacted Fick, through information somehow obtained in June 1964.

[11]Williams, the original executor of Mrs. Weber's estate died in 1966. Thereafter Richard S. Hubbell was appointed administrator with the will annexed, and was substituted for Williams as plaintiff in the civil action. Petitioner continued to act as attorney for the estate throughout the proceedings.

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learned that Bradford Fick had renounced all interest he had in the Estate in favor of Gladys Betty Heitz until during the month of July of 1968." The Court of Appeal affirmed the removal order in an unpublished opinion filed April 23, 1970. Petitioner Sullins did not request a rehearing, nor did he petition for a hearing from us.[12]

The disciplinary board's recommendation rests on the above recital of facts. Petitioner's numerous lengthy contentions in opposition to the recommendation may be consolidated and summarized as follows: (1) The local administrative committee and the disciplinary board permitted procedural irregularities which denied petitioner due process; in particular, the local administrative committee made findings, adopted by the disciplinary board, which involved matters not included in the State Bar's notice to show cause, as amended. (2) Mrs. Heitz's attorney David Daar had himself concealed from the court the existence of Fick's letter, which Daar had acquired shortly after it was written on June 9, 1964. (3) The no contest clause in the will implied that Fick forfeited his interest in the estate when he wrote petitioner offering to sign his interest over to Mrs. Heitz; alternatively, accepting his inheritance under the will estopped Fick from assigning his interest to Mrs. Heitz and thereby defeating Mrs. Weber's express disinheritance of her daughter. (4) Petitioner's duty to the creditors of Mrs. Weber's estate required him to press the civil action to cancel the deed, irrespective of Fick's intention to assign his interest in the estate to Mrs. Heitz; indeed, to avoid prejudicing this duty to the creditors, petitioner had to keep Fick's letter off the court records. These contentions will be examined seriatim.

Our standards of review of State Bar disciplinary recommendations are well established. **(1)** In determining the appropriate discipline for an attorney's misconduct, this court independently appraises the evidence and makes its own evaluation, recognizing that the disciplinary board's findings and recommendations, though not binding, are entitled to great weight (*In re Ellis* (1974) 12 Cal.3d 442 at p. 445 [115 Cal.Rptr. 795, 525 P.2d 699]); however, the burden is on petitioner to show that the board's recommendation is erroneous or unlawful (*In re Silverton* (1975) 14 Cal.3d 517 at p. 523 [121 Cal.Rptr. 596, 535 P.2d 724]; 7 Cal.Jur.3d Attorneys At Law, § 135, pp. 419-420).

[12]Although this Court of Appeal affirmation of petitioner's removal as attorney for the estate did not immediately terminate the bitter litigation between the parties, the ultimate disposition of the Brent Avenue Property now was predictable. On September 14, 1970, the superior court entered summary judgment for Mrs. Heitz in the civil action, finding that Mrs. Weber had, in fact, properly delivered the deed to her daughter; the public administrator represented the plaintiff estate.

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(2) Petitioner's contentions of procedural irregularities fail to meet this burden. State Bar Rules of Procedure applicable to proceedings before a local administrative committee (rule 29) and before the disciplinary board (rule 75) are identical in substance. Rule 29 provides in relevant part that: "No finding or recommendation of a commitee made in a disciplinary proceeding shall be invalidated . . . for error in pleading, or in procedure, . . . unless upon the whole record . . . the board is of the opinion that error has been committed and has resulted or will result in miscarriage of justice." In *Linnick* v. *State Bar* (1964) 62 Cal.2d 17 at p. 23 [41 Cal.Rptr. 1, 396 P.2d 33], we interpreted rule 29 to mean that a variance between the board's findings and the notice to show cause would not be regarded as a miscarriage of justice if the petitioner in fact had sufficient notice to eliminate prejudicial surprise in the preparation of his defense.

There are no grounds for belief that the procedures of the local administrative committee and the disciplinary board in any way prejudiced petitioner's defense to the charges against him. The hearings of the local administrative committee and the disciplinary board extended from July 12, 1972, to October 10, 1974; during these hearings petitioner was given full opportunity to argue his case and to make his very voluminous exhibits part of the record. All issues involved in the disciplinary board's findings were thoroughly argued in these hearings, as well as in various memoranda and briefs submitted by petitioner himself *prior to* the local administrative committee's report of its findings on May 20, 1974. The notice to show cause was twice amended at the urging of petitioner, in conformity with State Bar Rules of Procedure, rule 30. The violations of Business and Professions Code sections 6103, 6106 and 6128, asserted in the conclusions of the local administrative committee, were charged in the notice to show cause. In its original as well as its amended versions, the notice to show cause unmistakably charged that petitioner had concealed the existence of Fick's letter from the superior court; this concealment was a major element in the disciplinary board's findings. We conclude there is no merit to petitioner's first contention that he was denied due process by variances between the notice to show cause and the board's findings.

(3a) Petitioner's second contention, that Mrs. Heitz's attorney David Daar had himself concealed knowledge of Fick's letter from the court, is irrelevant to the basic issue before this court, namely whether petitioner deserves discipline. **(4)** As we said in *Demain* v. *State Bar* (1970) 3 Cal.3d 381 at page 386 [90 Cal.Rptr. 420, 475 P.2d 652], "It has been

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uniformly held that the purpose of a disciplinary proceeding is not to punish the attorney but to inquire into the moral fitness of an officer of the court to continue in that capacity, and to afford protection to the public, the courts and the legal profession." **(3b)** Our decision in the present inquiry would not be affected even if it were proved that Daar had concealed knowledge of Fick's letter. On these grounds alone, petitioner's second contention is wholly without merit for the purposes of the instant proceedings. Moreover, in actuality the contention that Daar acquired a copy of Fick's June 9, 1964, letter shortly after it was written is against the weight of the evidence.[13] We therefore reject, as pointless and against the evidence, petitioner's contention that Daar also concealed the existence of Fick's letter.

(5) Petitioner's third contention—that Fick's letter violated the no contest clause in the will, or alternatively that Fick was estopped from assigning his interest to Mrs. Heitz—is used by petitioner as an argument against the disciplinary board's finding, quoted earlier, that when he sought the 50 percent contingency fee agreement in September 1967 he withheld the material fact of Fick's letter from the court. Petitioner's argument is that since either of the above alternatives would prevent Fick from assigning the Brent Avenue Property to Mrs. Heitz, the letter actually was not material to issues before the court in September 1967.

We find this argument much more ingenious than convincing. This third contention of petitioner's, concerning which the disciplinary board made no specific finding, will not meet the board's findings and charges that he intentionally deceived the court unless petitioner in September 1967 thought Fick had forfeited his claim to the estate, or believed that Fick was not free to assign his inheritance to Mrs. Heitz. There is no evidence that petitioner so thought or believed in September 1967; there is good evidence to the contrary.[14] Therefore, though we question the

[13]We reach this conclusion without having to give the required great weight to the evidence supporting the findings of the local administrative committee, who were able to observe the demeanor of witnesses (*Sampson* v. *State Bar* (1974) 12 Cal.3d 70 at p. 74 [115 Cal.Rptr. 43, 524 P.2d 139].) Petitioner does not explain away Fick's uncontradicted testimony that he never had mailed a copy of his letter to either Mrs. Heitz or Mr. Daar, and indeed never had heard of Daar before 1968; petitioner does not accuse Fick of untruthfulness or failure of memory. We remarked earlier that the court which in April 1969 ordered petitioner's removal as attorney for the estate agreed that Mrs. Heitz and Daar had not learned of Fick's letter until 1968; petitioner's arguments in this regard were aired before that court.

[14]At no time did petitioner notify Fick that Fick's June 1964 letter risked forfeiture of his inheritance, or that Fick's intended assignment to Mrs. Heitz of his interest might be barred by the will. In May 1967, when appointment of Hubbell as administrator with the

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claims that Fick's letter (see fn. 8, *supra*, p. 615) violated the no contest clause (see fn. 6, *supra*, p. 614), or that the will estopped Fick's assignment of his interest to Mrs. Heitz, we need not rule on the legitimacy of these claims. We conclude that petitioner's third contention, embodying these claims, is no defense to the disciplinary board's findings and charges against him.

(6) Petitioner's fourth and last contention, that his duty to the estate's creditors required him to withhold Fick's letter from the court, is offered as a defense to the local administrative committee's finding that petitioner ". . . intended to and did in fact mislead the Court." The local administrative committee rejected this defense after full discussion, and incorporated into its findings the language that petitioner ". . . had committed a fraud upon the Court," used by the court which ordered petitioner's removal as attorney for the estate.

The disciplinary board accepted this language, and also accepted the language of the Court of Appeal which in April 1970 affirmed the removal order: "The issue before the court on the petition for removal was not one of reweighing the issue of employment of counsel to recover the property; it was whether material facts bearing on the proposed contingent fee contract had been withheld from the court." Although the board did not specifically adopt the local administrative committee's conclusions, petitioner as an attorney is bound by the Business and Professions Code. Business and Professions Code sections 6068, subdivision (d) and 6128, subdivision (a) *unqualifiedly* require an attorney to

will annexed was first requested (see fn. 11, *supra*, p. 616), petitioner Sullins certified that he served "Notice of Hearing upon BRADFORD FICK, the legatee and devisee named in the decedent's will"; no notices were served on other potential devisees, though such service would be expected if petitioner believed Fick had forfeited his inheritance. Petitioner referred to this "NOTICE upon BRADFORD FICK" in his May 1, 1972 answer to the State Bar's original notice to show cause, saying: "It is thus seen that the fact that I heard nothing whatsoever from Fick in response to my notice to him of May 8, 1967, and his subsequent letter of December 9, 1967, show[s] that he had long since abandoned any supposed idea of conveying his interest to Gladys Betty Heitz, if he ever had any such intention, which I deny, and was content that the action against her be continued unabated." In this same answer petitioner also stated, "I deny that Fick's letter of June 9, 1964, represented his intention to relinquish his interest in the estate to Gladys Betty Heitz." The theory that Fick was estopped from assigning his interest to Mrs. Heitz was not advanced by petitioner in any of his many prolix written memoranda and statement to the disciplinary board. A related theory, that Mrs. Heitz was estopped from becoming an assignee of Fick's was first advanced by petitioner on September 12, 1974, in his supplemental statement in opposition to the report of the local administrative committee.

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refrain from acts which mislead or deceive the court (see fns. 1 and 2, *supra*, p. 613); petitioner admits he did not disclose the letter's receipt or its contents to the court. We conclude that petitioner's fourth contention concerning his duty to the estate's creditors is no defense to the charge that he intentionally deceived the court.

In summary, petitioner's contentions, taken as a whole, fail to meet his burden (*In re Silverton* (1975) 14 Cal.3d 517, at p. 523 [121 Cal.Rptr. 596, 535 P.2d 724]) of showing that the board's recommendation is erroneous or unlawful. **(7a)** We still must make our independent evaluation of the appropriateness of the board's recommended discipline however; petitioner's only request concerning the degree of discipline is that the charges against him be entirely dismissed. The main finding against petitioner is that he intentionally misled the court. The amended notice to show cause and the board's findings imply petitioner misled the court for his own gain, an implication accepted by the State Bar;[15] petitioner's fourth contention claims the deception stemmed from his conceived duty to the estate's creditors.

(8) The rule is: "Charges of unprofessional conduct on the part of an attorney should be sustained by convincing proof and to a reasonable certainty, and reasonable doubts must be resolved in the attorney's favor" (*Bluestein* v. *State Bar* (1974) 13 Cal.3d 162 at p. 168 [118 Cal.Rptr. 175, 529 P.2d 599]).

[15]Paragraph Five of the amended notice to show cause states: "Notwithstanding Mr. Fick's stated intention to relinquish his total interest, as sole beneficiary, in said estate to said Gladys Betty Heitz, you counseled and encouraged the continuance of said civil lawsuit against Gladys Betty Heitz because of your contingent fee interest therein." Paragraph Fifteen of the board's findings states: "On April 23, 1969, the Court . . . granting the petition for removal . . . found, inter alia, that Respondent had committed a fraud upon the Court in his failure to disclose the existence or content of the Bradford Fick letter to the Court and in the mismanagement of the Estate." The phrase "mismanagement of the Estate" is a reference to Daar's trial brief in this removal action, which argued that whereas the litigation to cancel the deed was needed to pay at most $2,000 in claims against the estate, successful cancellation of the deed would leave the estate and ultimately Mrs. Heitz (through Fick's assignment to her of his interest) with no more than half of the $20,000 value of the Brent Avenue Property, because half would go to petitioner Sullins as his fee. "This," said Daar's brief, "is mismanagement, constructive fraud, waste of property of the Estate in maintaining such action, and wholly inequitable." The State Bar's brief in the instant case, citing the fact that the civil action eventually resulted in summary judgment for Mrs. Heitz, asserts: "The evidence irresistably establishes that Petitioner deceived the court, and that he did so with a view to his own financial gain."

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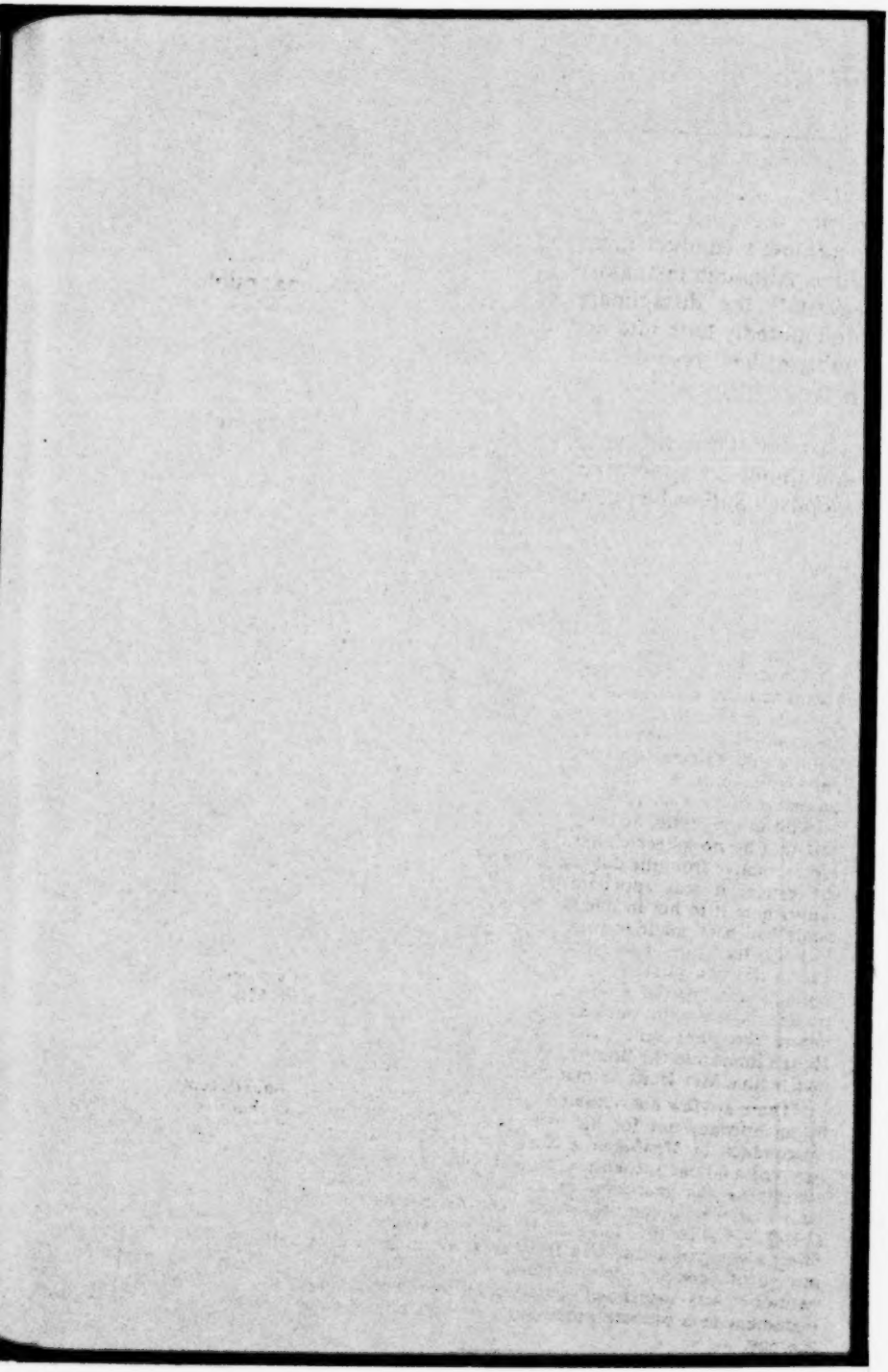
(7b) We need not pass upon the issue of whether the petitioner misled the court "for his own gain,"[16] because we have concluded that petitioner's conduct in misleading the court, in itself, called for discipline. Although in analogous cases the discipline imposed has been more severe,[17] the disciplinary board, in recommending public reproval, undoubtedly took into account the petitioner's age, his previous 45-year unblemished record as an attorney, and has had the advantage of personal observation of petitioner.

Under these circumstances we are satisfied that a public reproval constitutes an appropriate discipline. It is therefore ordered that Paul Goodsell Sullins be publicly reproved by publication of this opinion.

[16]The court which appointed a conservator for Mrs. Weber in September 1963 questioned the effectiveness of Mrs. Heitz's deed and recommended the civil action against her. (See fn. 5, *supra*, p. 614) The Court of Appeal which in April 1970 affirmed the removal order wrote: "Mr. Fick's letter did not absolve appellant Hubbell of the statutory duty to take possession of all of the decedent's estate and collect all debts due her (Prob. Code, § 571) in order that the expenses of administration and debts of the estate could be paid (Prob. Code, §§ 951 and 952). While Mr. Fick could assign his interest in the estate, he could not free it from the process of administration. The mere fact that he no longer claimed an interest in debts owing to the estate did not free its representative from the duty to collect them. If Gladys Heitz held property belonging to the estate, it was appellant Hubbell's duty to gain possession thereof and only redistribute it to her in due course of administration, after all disbursements from the estate had been made in compliance with the law. The existence of the letter from Mr. Fick was therefore of no relevance to the determination of whether recovery of the asset was in the best interests of the estate. The failure to disclose it, however, constituted fraud under Probate Code section 521." Moreover, Daar's brief (see fn. 15, *supra*, p. 621) did not point out that the fee Daar had arranged with Mrs. Heitz in April 1964, before petitioner Sullins received Fick's letter, was an unqualified half share in Mrs. Heitz's interest in the Brent Avenue Property; thus, despite the eventual dismissal of the civil action, Mrs. Heitz ultimately retained only half the value of the property.

[17]There are few not outdated cases solely involving intentional deception of the court by an attorney not for his own gain, wherein the attorney had no prior record of misconduct. In *McMahon* v. *State Bar* (1952) 39 Cal.2d 367 [246 P.2d 931], petitioner received a 60-day suspension for withholding from the probate court knowledge he had concerning the execution of a will when he presented an allegation of intestacy; petitioner was attempting to advance his client's interests. In *Pickering* v. *State Bar* (1944) 24 Cal.2d 141 [148 P.2d 1], petitioner received a year's suspension for knowingly filing a complaint asserting facts he knew to be untrue, although apparently without motive of personal gain. In *Paine* v. *State Bar* (1939) 14 Cal.2d 150 [93 P.2d 103], petitioner was suspended for six months for misleading the court by filing a false document in a probate proceeding, without any finding of intent to personally profit thereby.



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